IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 384 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YASINMIYA KASAMMIYA QURESHI

Versus

STATE OF GUJ

Appearance:

1. Criminal Revision Application No. 384 of 1991

MR SURESH S PATEL for Petitioner No. 1

MR MH BAREJIA for Petitioner No. 1

Mr.H.L.Jani, learned A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 02/05/2003

C.A.V. JUDGEMENT

1. Heard Mr.S.S.Patel, learned advocate for the

petitioner-accused and Mr.H.L.Jani, learned A.P.P. for the State. The petitioner is impleaded in C.R.No.I-107 of 1986 dated 26.6.86 u/s 363, 366 and 380 of I.P.C. of Unjha Police Station, Mehsana. In 30 of 1988, by judgment and order dated 18.7.90 the learned Assistant Sessions Judge at Mehsana convicted the petitioner u/s 380, 363 and 366 of the Indian Penal Code ordering him to undergo rigorous imprisonment for the terms of 3 years and to pay fine of Rs.500/- and in default to suffer simple imprisonment for 6 months for the offence punishable u/s 363 of the Indian Penal Code, further ordering him to undergo rigorous imprisonment for the term of 5 years and to pay a fine of Rs.500/- and in default to suffer simple imprisonment for 6 months for the offence punishable u/s 366 of the Indian Penal Code and further ordering him to undergo rigorous imprisonment for the term of 3 years and to pay fine of Rs.300/- and in default to suffer simple imprisonment for 4 months for the offence punishable u/s 380 of the Indian Penal Code and further to undergo the imprisonment concurrently.

2. The petitioner paid the fine of Rs.1300/- in cash in the office of the Nazir of the Court on the same day and filed criminal appeal bearing no. 52/90 in the court of Addl.Sessions Judge, Mehsana u/s 374 of the Code of Criminal Procedure and by judgment and order dated 31.1.91 the criminal appeal court maintained the conviction of the petitioner for all the 3 counts but the substantive sentences of imprisonment for offences punishable under sections 380, 363 and 366 of the Indian Penal Code were reduced to simple imprisonment for one year and all of them are ordered to run concurrently and the rest of the judgment of the trial court was confirmed.

3. According to the petitioner, in the criminal trial case, the petitioner-accused was released on bail and he was taken into judicial custody on 4.2.91 by virtue of judgment dated 31.1.91 by criminal court of appeal at Mehsana. Dissatisfied with the judgment and order of the learned Addl.Sessions Judge Mehsana, the petitioner-accused has filed this revision application.

4. At the time of hearing of this revision application, the petitioner's wife Ranjanben Shamsadbanu has filed one affidavit dated 15.3.03 stating that she married the present petitioner-accused and by the said wedlock, she has delivered 5 children. The elder daughter is aged 11 years and younger son is 1 year. That the marriage took place on 10.10.91 in presence of witnesses as per muslim customs. Since last

12 years, she is staying with the present petitioner as wife. Lastly, she has stated that there are seven persons in her family and the present petitioner is the only person earning at her house running STD/PCO. There are no relations with her in-laws and her parents. Along with the said affidavit she has produced the xerox copy of marriage certificate, xerox copy of birth certificate of her children and ration card. The said affidavit to be taken on record.

5. The petitioner-accused Shri Yasinmiya Kasammiya Qureshi has requested this court to confirm the sentence passed against him and allow him to get free by considering the fact that he was in jail for more than 2 months.

6. I have perused the affidavit and contents therein. I also called the deponent of the affidavit in court and obtained her signature on the back side of one of the birth certificates and found that the signature on the rear side of the xerox copy of the birth certificate of children and on the affidavit is the same. Therefore, there is no reason to disbelieve the deponent. She came with her 5 children in the court. The position is that if I do not consider the evidence of the present petitioner and do not accept the contents of the affidavit and the petitioner is sent to jail, the family will be ruined. Therefore, while accepting the contention of the petitioner-accused and by taking into consideration the sentence and conviction that he has undergone, I am acquitting the petitioner-accused from undergoing the remaining sentence.

7. The trial court and appellate court has gone into the merits of the case and passed the sentence as stated above. I agree with the same but I am acquitting the accused only in view of the position that the family will be ruined and taking a lenient view.

8. So far the question of sentence is concerned, it is a case of the year 1986 and a period of 16 years have elapsed. Hence considering the long period elapsed since the date of occurrence till now, I am of the view that ends of justice will be met if the sentence is reduced to the period already undergone by the petitioner in jail custody. Accordingly, the order of sentence is modified and the sentence awareded to the petitioner is reduced to the period already undergone by him in custody.

9. In view of the aforesaid circumstances, I do not find any merit in the revision application which stands

dismissed subject to the modification in the sentence as indicated above. The petitioner is ordered to be discharged from the liability of his bail bonds. Rule is discharged.

(SHARAD D DAVE, J)

srilatha